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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,349	08/21/2001	Roy McGee	776	7836

7590 10/31/2003

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EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,349

Applicant(s)

MCGEE ET AL.

Examiner

Joseph M Pelham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. The examiner acknowledges Applicant's submission of the amendment filed 8/19/03. Claims 1-6 remain pending.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the heating element retained within [the] base," described in the specification as "heat element 50 located on the interior side of the coffee mug holder 15," must be shown or the feature canceled from the claims. No new matter should be entered.

Applicant's assertion that the heater of Vanselow is not in the location claimed by Applicant brings to issue the lack of any figure depicting Applicant's heater location. The need of such a Figure is therefore imperative. If Applicant's heater is in fact located on the interior of the base portion 17, oriented horizontally and facing upward, then Applicant has mistaken the disclosure of Vanselow, which discloses exactly this.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6075229 to Vanselow.

Referring to Figures 1-4 and column 4, lines 36-47 especially, Vanselow discloses the invention exactly as claimed, including a mug 30, lid 34, base 12, heating element 41 within the base 12, and 12 volt DC adapter plug 47 for use in an automobile.

Claim Rejections - 35 USC § 103

4. Claims 2, 3, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of U.S. Patent 6072161 to Stein.

Vanselow discloses a continuously adjustable thermostat rather than the recited two fixed settings, and does not disclose insulation for the heating element. However, the examiner hereby gives notice that merely "downgrading" the control of Vanselow cannot be regarded to patentably distinguish the claimed invention from the prior art, since it would have been obvious to modify the temperature control of Vanselow to have only two settings to reduce the cost and simplify the device.

Referring to Figure 2 and column 2, line 61, through column 3, line 2, Stein discloses insulation placed between a mug heating element and the exterior wall of the device. It would

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have been obvious to adapt the insulation of Stein to the heater of Vanselow to enhance both the comfort and protection of the user.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of Stein, as applied to claims 2, 3, and 6 immediately above, and further in view of U.S. Patent 6121585 to Dam.

The heated drinking mug recited in claim 4 differs from that suggested by Vanselow in view of Stein only in calling for the option of an AC power source. Dam discloses, in Figures 1-5 and column 8, lines 30-39, a heated drinking mug utilizing either DC or AC power. It would have been obvious to adapt the mug of Vanselow so as to also accommodate AC power, to allow use at home as well as in a car.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of Stein, as applied to claims 2, 3, and 6 immediately above, and further in view of U.S. Patent 5023433 to Gordon.

Vanselow is silent regarding the details of heater 41, and Stein is silent regarding the flexibility of heater 26. Gordon discloses a flexible heater "rolled into a hollow cylinder into which a baby bottle may be placed..." (column 5, lines 41-43); that is, in view of Vanselow, "located on the interior side of the coffee mug holder," as recited. It would therefore have been obvious to adapt the flexible heater of Gordon to the mug warmer of Vanselow, since Gordon discloses beverage warming to be an appropriate application.

Response to Arguments

7. Applicant's arguments filed 8/19/03 have been fully considered but they are not persuasive.

Applicant again reiterates limitations which are asserted to be "unanticipated by Vanselow" (Applicant's emphasis). With sincere appreciation for Applicant's extensive invocations of case law, it appears that Applicant has perhaps not fully reviewed the cited prior art. Applicant has, moreover, judged it unnecessary to go beyond only asserting lack of anticipation or suggestion to combine the prior art teachings (pages 7-8). Yet all of the "features" listed as "unanticipated" are either plainly and unambiguously disclosed by Vanselow, or immediately suggested by Vanselow in view of the balance of cited prior art. The examiner will address these as they are numbered in Applicant's response (page 6):

(1.) Applicant states that claim 1, inter alia, recites "features unanticipated by Vanselow:" "A heating elements retained within the *base* (as opposed to a heating element in the receiving member 20 and central bore 23)."

The Examiner notes firstly that Vanselow describes "heating *an item* within the central bore 23 of the receiving member 20" (column 4, lines 37-39; Examiner's emphasis) rather than describing the bore 20 specifically as the heater location, and urges Applicant to review Figure 2 and column 4, lines 41-43. Vanselow discloses a heating element 41 on the inner surface of base 12; Applicant's heater 50 is described in a precisely equivalent manner to reside in a receiving

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member (the "coffee mug holder 15") having a central bore: "on the interior side of the coffee mug holder 15," according to the disclosure at page 6, lines 8-11.

(2.) Applicant asserts novelty of the following feature: "the capability...to use a standard drinking mug with the base element."

Claim 1 recites only "a cup with handle;" hence the question of a "standard drinking mug" is not germane.

Claim 2 recites "a generally standard drinking vessel," which does not exclude the coffee cup of Vanselow, since Vanselow does not distinguish the cup beyond its identification as suitable for coffee. Moreover, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." In re Prater, 162 USPQ 541, 550 - 51 (CCPA 1969). The instant specification identifies the invention variously as "an improved coffee mug capable of being electrically heated" and a "generally standard drinking vessel." Vanselow discloses "a new cup warmer holder for keeping beverages, such as coffee, hot," and the vessel itself as merely "a cup."

Vanselow thus implicates no special structure for the cup to be heated, and furthermore anticipates "variations in size,...shape, form..." for the parts of the invention, hence for the cup/mug of the invention, which must therefore be regarded to implicate a "generally standard drinking vessel." See also In re Van Geuns (CA FC) 26 USPQ2d 1057.

(3.) Applicant asserts novelty of "a base with an upstanding wall that circumscribes a lower portion of the mug...without interfering with the handle of the mug." Referring to Figure 3 and column 4, lines 37-48, Vanselow discloses an upstanding wall 20 that circumscribes a lower portion of the mug 30 without interfering with the handle 32 of the mug, since the mug must rest in contact with heater 41 in the base 12.

(4.) The newly claimed "insulating media to entrap the warmth to the beverage..." is disclosed by newly cited Stein.

Conclusion


8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

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1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning communications from the Examiner should be directed to Joseph Pelham at (703) 308-1709; fax: 703-872-9302 (before final), 703-872-9303 (after final), 703-872-9301 (customer service).


Joseph Pelham
Primary Patent Examiner
Art Unit 3742

JMP
October 28, 2003

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1. The examiner acknowledges Applicant's submission of the amendment filed 3/14/02. Claims 1-6 remain pending.

Claim Rejections - 35 USC § 102

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6075229 to Vanselow.

Referring to Figures 1-4, Vanselow discloses the claimed invention exactly as claimed, including a mug 30, lid 34, base 12, 20, and 12 volt adapter plug 47. It is noted that the plug 47 is inserted into a "power receptacle," which limitation imposes no constraints on the nature of the power supply, and hence does not preclude a 12 volt source.

Claim Rejections - 35 USC § 103

3. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow. While Vanselow discloses an essentially continuously adjustable thermostat, and does not explicitly disclose a flexible heater, such cannot be regarded to patentably distinguish the claimed invention from the prior art. It would have been obvious to modify the temperature control of Vanselow to have only two settings to reduce the cost of the device, and to utilize a flexible heater, regarding the details of which Vanselow is silent, since these are conventional heater means to apply to a flat surface.

Response to Arguments

4. Applicant's arguments filed 3/14/02 have been fully considered but they are not persuasive. Applicant lists 5 limitations which are asserted to patentably distinguish the claimed invention from the heated mug and base of Vanselow. The examiner will address these in order:
 - "a lid" - Vanselow discloses a lid 34, as previously noted.
 - "...heating elements retained within a base AND powered by 12 volts DC" - Vanselow discloses a heating element 41 in a base 12 and 12 volt power supply capability 47.
 - "The ability to use the base with a standard drinking mug" - Claim 1 recites "a cup with handle" and amended claim 2 recites "a generally standard drinking vessel," neither of which precludes the mug of Vanselow.
 - "a power plug is capable of connecting directly to a motor vehicle's power system." The 12 volt DC adapter of Vanselow allows exactly this.
 - "a flexible resistive type heater... [in the] ...holder, to provide heat" directly to the mug. As noted in item 3 above, such a heater is well known, and one of many types available for domestic heating devices.

The balance of Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

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Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication should be directed to Joseph Pelham, at (703)308-1709. Status inquiries of a general nature should be directed to the Technology Center 3700 receptionist at (703) 308-0861.

Joseph Pelham
Primary Patent Examiner
Art Unit 3742

JP
October 28, 2003

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1. The examiner acknowledges Applicant's submission of the supplemental appeal brief filed 1/30/03. In accord with Office policy, the examiner of record has again discussed the current rejections in an appeal conference with two other senior examiners. Our conference concluded that prior art should be cited in support of the rejection of claim 4, the "plug capable of connecting to a power receptacle," implicating AC power in view of the specification, and that the balance of the rejections are proper and should be maintained.

Prosecution is hereby reopened. Claims 1-6 are pending

Specification

2. The disclosure is objected to because of the following informalities: at page 6, lines 4-6, and page 7, lines 4-6, reference is made to power plug 32 being capable of connecting to a power receptacle 35 via power cord 39, a power pack 37, step-down transformer 60, and connector 62, none of which is shown in the Figures.

Appropriate correction is required.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "power plug...capable of connecting to a power receptacle" must be shown or the feature canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 1 is objected to because of the following informalities: at line 5, "heating elements" is plural, yet only a single heating element is disclosed. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6075229 to Vanselow.

Referring to Figures 1-4, Vanselow discloses the claimed invention exactly as claimed, including a mug 30, which is a "generally standard drinking vessel" 30 because it is cylindrical and stands on its own, lid 34, base 12, 20, and 12 volt DC adapter plug 47 for use in an automobile.

Claim Rejections - 35 USC § 103

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of U.S. Patent 6121585 to Dam.

The heated drinking mug recited in claim 4 differs from Vanselow only in calling for the option of an AC power source. Dam discloses, in Figures 1-5 and column 8, lines 30-39, a heated drinking mug utilizing either DC or AC power. It would have been obvious to adapt the mug of Vanselow so as to also accommodate AC power, to allow use at home as well as in a car.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of U.S. Patent 5023433 to Gordon.

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Vanselow discloses a continuously adjustable thermostat, and is silent regarding the details of heater 41. However, the examiner gives official notice that merely downgrading the control of Vanselow cannot be regarded to patentably distinguish the claimed invention from the prior art, since it would have been obvious to modify the temperature control of Vanselow to have only two settings to reduce the cost and simplify the device. Gordon discloses a flexible heater "rolled into a hollow cylinder into which a baby bottle may be placed... A plastic housing may be provided" (column 5, lines 41-43), that is, in view of Vanselow, "located on the interior side of the coffee mug holder," as recited. It would therefore have been obvious to adapt the flexible heater of Gordon to the mug warmer of Vanselow, since Gordon discloses beverage warming to be an appropriate application.

Response to Arguments

8. Applicant's arguments filed 1/30/03 have been fully considered but they are not persuasive.

Applicant avers, at page 2, lines 4-6, that the Gordon patent, cited in combination with Vanselow as grounds of rejection for the "a flexible resistive type heater... on the interior side of the ...holder," "does not add to any suggestion to as to the desirability of any modification of the references to describe the present invention." However, the examiner did not cite Gordon as suggesting a modification of Vanselow, but only to identify a heater type appropriate to heating individual beverage containers, about which Vanselow is completely silent. Vanselow identifies a heater 41 and its location but not its type; Gordon discloses that a flexible heater is appropriate to the heating of individual beverage containers (column 5, lines 41-45) at the time of the invention.

Also at page 2, lines 11-14, Applicant avers the lack of a suggestion to heat a mug "in a manner that flexibly retains the mug in firm mechanical contact. This is not recited in the claims.

Conclusion

9. The prior art cited on the PTO FORM 892, but not applied, is pertinent to the claimed invention. Applicant is urged to consider all cited prior art when replying to this action.

Any inquiry concerning communications from the Examiner should be directed to Joseph Pelham at (703) 308-1709; fax: 703-872-9302 (before final), 703-872-9303 (after final), 703-872-9301 (customer service).

Joseph Pelham
Primary Patent Examiner
Art Unit 3742

JMP
October 28, 2003